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CITY/STATE: SF CLIENT NAME: WAIS  
OFFICE #: 356-5400 WSGR OPERATOR: \_\_\_\_\_

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-CHRIS

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# FAX transmission

**DATE:** May 23, 1995**FROM:** HARRY BOADWEE

■ FENWICK & WEST  
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Palo Alto, CA 94306  
(415) 858-7188  
(415) 424-0859 Fax

**TO:** Paul Baker, Esq.  
America Online, Inc.

(703) 448-9164

Christopher Younger, Esq.  
Wilson, Sonsini, Goodrich & Rosati, P.C.

(415) 496-4092

Mr. Pete Buzy  
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(703) 903-5200

**NO. PAGES:** 10 (including cover page)

**ACCOUNT NO.:** 19649-00100

■ **Message:**

Attached are changed pages to the Agreement of Merger, Escrow Agreement (Section 4(c) cannot be filled in until tomorrow), Investment Representation Agreements, and the F&W legal opinion. Please pass these changes on to your business and financial personnel, as appropriate. An updated spreadsheet showing the computations underlying these changes will be available shortly from AOL.

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**AGREEMENT OF MERGER  
OF  
AOL ACQUISITION CORP.,  
A CALIFORNIA CORPORATION  
WITH AND INTO  
WIDE AREA INFORMATION SERVERS, INC.,  
A CALIFORNIA CORPORATION**

This Agreement of Merger (this "Agreement") is entered into on May 23, 1995 by and between AOL Acquisition Corp., a California corporation and the wholly-owned subsidiary ("Sub") of America Online, Inc., a Delaware corporation ("AOL"), and Wide Area Information Servers, Inc., a California corporation ("WAIS").

1. Surviving Corporation. Pursuant to Chapter 11 of the California General Corporation Law, Sub will be merged with and into WAIS (the "Merger"), with WAIS to be the surviving corporation of the Merger.

2. Effective Time of the Merger. The Merger will be effective (the "Effective Time") at the time and on the date on which a copy of this Agreement is filed with the Secretary of State of the State of California.

3. Conversion of Shares.

(a) Conversion of Common Stock. Each share of WAIS Common Stock that is issued and outstanding immediately prior to the Effective Time and that does not dissent pursuant to Section 9 hereof, will, by virtue of the Merger and at the Effective Time, and without further action on the part of any holder thereof, be converted into 0.049283189 fully paid and nonassessable shares of AOL Common Stock, \$0.01 par value per share. Each share of Sub Common Stock that is outstanding immediately prior to the Effective Time will, at the Effective Time, be converted into one share of WAIS Common Stock.

(b) Assumption of Options. The options to purchase WAIS Common Stock ("WAIS Options") that are outstanding (whether or not exercisable)

immediately prior to the Effective Time will, by virtue of the Merger at the Effective Time and without further action on the part of any holder thereof, be assumed by AOL and converted into options to purchase an aggregate of 94,022 shares of AOL Common Stock ("AOL Options"). The exercise price per share of AOL Common Stock purchasable under each such AOL Option will be equal to the quotient of (i) the exercise price of the WAIS Option (per share of WAIS Common Stock) divided by (ii) 0.049283189. Continuous employment with WAIS will be credited to an optionee for the purposes of determining an optionee's vesting commencement date for AOL Options after the Merger. The term, exercisability, vesting schedule and all other terms of the AOL Options (including their status as Incentive Stock Options under Section 422 of the Internal Revenue Code of 1986, as amended) will remain otherwise the same as the corresponding WAIS Options from which they were converted. No vesting or exercisability of any WAIS Options will be accelerated solely as a result of the Merger. Any outstanding options to purchase WAIS Common Stock that are not set forth in Exhibit 1.1.1 to the Plan will be canceled on the closing of the Merger.

(c) Escrow Shares. At the closing of the Merger, AOL will withhold, pro rata, from the shares of AOL Common Stock that would otherwise be delivered to WAIS shareholders, 10% of the shares of AOL Common Stock issued in the Merger. AOL will deposit in escrow, pursuant to a separate Escrow Agreement, certificates representing the shares thus withheld. The shares of AOL Common Stock represented by the certificates deposited in escrow will be held as collateral for the indemnification obligations of the WAIS shareholders under Section 10.2 to the Plan and pursuant to the Escrow Agreement.

(d) Exchange of Share Certificates. As of the Effective Time, all shares of WAIS Common Stock that are outstanding immediately prior thereto that are not dissenting shares will, by virtue of the Merger and without further action, cease to exist and will be converted into the right to receive from AOL shares of AOL Common Stock. Within five business days after the Effective Time, AOL will send a transmittal letter to each holder of WAIS Common Stock instructing them as to the surrender of their WAIS Common Stock to the AOL exchange agent. As soon as practicable after the Effective Time, the WAIS Shareholders will surrender the certificate(s) for such shares (the "WAIS Certificates"), duly endorsed as requested by AOL, to AOL for cancellation. Promptly after the Effective Time and receipt of such WAIS Certificates, AOL will issue to each such tendering holder who does not hold dissenting shares a certificate for that number of shares of AOL Common Stock to which such holder is entitled pursuant to the Plan, subject to Section 3(e) hereof, less the shares of AOL Common Stock deposited in escrow pursuant to Section 3(c) hereof, and distribute any cash payable under Section 3(e) hereof.

(e) Fractional Shares. No fractional shares of AOL Common Stock will be issued in connection with the Merger. In lieu thereof, the holders of WAIS

Stock who would otherwise be entitled to receive a fraction of a share of AOL Common Stock, after aggregating all shares of AOL Common Stock to be received by such holder, will receive from AOL, promptly after the Effective Time, an amount of cash as determined pursuant to the Plan. Holders of WAIS Options that would otherwise be converted into an AOL Option to purchase a fraction of a share of AOL Common Stock, after aggregating all AOL Options to be received by such holder that have the same exercise price per share, will receive from AOL, promptly at the time of any exercise of such AOL Options, an amount of cash as determined pursuant to the Plan.

4. Plan. The parties to this Agreement are also parties to the Agreement and Plan of Reorganization dated as of May 12, 1995 (the "Plan"). The Plan and this Agreement are intended to be construed together in order to effectuate their purposes.

5. Directors and Officers. At the Effective Time, the Board of Directors and officers of Sub will become the Board of Directors and officers of WAIS.

6. Further Assurances. The parties to the Plan have agreed that if, at any time after the Effective Time, they or any of them consider or are advised that any further deeds, assignments or assurances are reasonably necessary or desirable to effectuate the Merger, at the request of AOL, they and any of their officers shall execute and deliver all such proper deeds, assignments and assurances and do all other things necessary or desirable to effectuate the Merger and otherwise to carry out the purpose of the Plan.

7. Articles of Incorporation. At the Effective Time, the Articles of Incorporation of WAIS will be amended by virtue of the Merger, subject to Sections 900 and 907 of Chapter 9 of the California General Corporation Law, to read as set forth in full in Attachment One hereto.

8. Termination. This Agreement may be terminated and the proposed Merger abandoned at any time prior to the Effective Time by (a) mutual written consent of the parties to this Agreement; (b) by AOL or Sub if any of the conditions precedent to AOL's and Sub's obligations set forth in Section 8 of the Plan have not been fulfilled or waived at and as of closing; or (c) by WAIS if any of the conditions precedent to WAIS's obligations set forth in Section 7 of the Plan have not been fulfilled or waived at and as of the closing.

9. Dissenting Shares. Holders of shares of WAIS Common Stock held by persons, if any, who have complied with all requirements for perfecting shareholders' rights of appraisal as set forth in Chapter 13 of the California General Corporation Law will be entitled to their rights under such Chapter with respect to such shares. WAIS Common Stock as to which shareholders' rights of appraisal have not been perfected

## ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is entered into as of May 23, 1995, by and among America Online, Inc., a Delaware corporation ("AOL"), Wide Area Information Servers, Inc., a California corporation ("WAIS"), Brewster Kahle, as representative of the Holders (as hereinafter defined) of WAIS stock (the "Representative"), and NationsBank, N.A. as "Escrow Agent".

### RECITALS

A. WAIS, AOL and AOL Acquisition Corp., a California corporation and wholly-owned subsidiary of AOL ("Sub"), have entered into an Agreement and Plan of Reorganization, dated as of May 12, 1995 (the "Plan"), pursuant to which Sub will merge with and into WAIS, with WAIS surviving the Merger. The capitalized terms used in this Agreement and not otherwise defined herein will have the meanings given them in the Plan.

B. Pursuant to the Plan, an aggregate of 370,852 shares of AOL Common Stock are to be issued to the WAIS shareholders as listed on Exhibit A attached hereto.

C. The Plan provides for shares equaling ten percent (10%) of the shares of AOL Common Stock that are issued in the Merger to the WAIS Shareholders (the "Escrow Shares") to be deducted from the shares of AOL Common Stock issued to such WAIS shareholders (collectively the "Holders") and be placed in an escrow account (the "Escrow Account") to secure certain indemnification obligations of the Holders to AOL, Sub and other Indemnified Persons under the Plan on the terms and conditions set forth herein. The Escrow Shares required to be deposited in the Escrow Account pursuant to this Agreement by Holders are shown on Exhibit A attached hereto.

D. The parties hereto desire to establish the terms and conditions pursuant to which the Escrow Shares will be deposited, held in, and disbursed from the Escrow Account.

NOW, THEREFORE, the parties hereto hereby agree as follows:

#### 1. Escrow and Indemnification

(a) Escrow of Shares. Promptly after the Effective Time, Bank of Boston (or its successor or replacement), as Exchange Agent (the "Exchange Agent"), will deposit the Escrow Shares deducted from the shares issued to the Holders in the Merger with the Escrow Agent, who will hold them in escrow as collateral for the indemnification obligations of the Holders under Section 10.2 of the Plan until AOL is required to release such Escrow Shares pursuant to the terms of this Agreement. The Escrow Shares will include "Additional Escrow Shares" as that term is defined in Section 2(b) of this Agreement. The Escrow Agent agrees to accept delivery of the Escrow Shares and to hold such Escrow Shares in escrow subject to the terms and conditions of this Agreement.

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WALS Shareholder Name	Number of WALS Shares Represented by Certificate	WALS Shareholder Holdings of AOL shares without fractional remainders	Post-Conversion WALS Shareholder AOL Shares (With escrow of 10%)	AOL Shares Issuable at Closing to WALS Shareholders
Brewster Kahle	7,500,000	<u>√369.623</u>	<u>√36,962</u>	<u>√332,661</u>
WS Investment Co. 95A	22,500	<u>√1.107</u>	<u>√1.10</u>	<u>√.997</u>
Allen L. Morgan	2,500	<u>√.122</u>	<u>√.12</u>	<u>√.110</u>

CONVERSION OF  
WIDE AREA INFORMATION SERVERS, INC. ("WALS")  
CAPITAL STOCK  
(With information provided as of May 23, 1995)  
INTO AMERICA ONLINE, INC. ("AOL")  
(Conversion Ratio: 0.049283189)

### Exhibit A

### Escrow Agreement

[Brewster Kahle]

May 23, 1995

America Online, Inc.  
8619 Westwood Center Drive  
Vienna, VA 22182

**Investment Representation Agreement**

Ladies and Gentlemen:

On this date the undersigned ("**Purchaser**") has acquired from America Online, Inc., a Delaware corporation (the "**Company**"), an aggregate of 369,623 shares of the Company's Common Stock (the "**Restricted Securities**") in consideration of Purchaser's delivery to the Company of shares of Common Stock of Wide Area Information Servers, Inc., a California Corporation ("**WAIS**"), as contemplated by the Agreement and Plan of Reorganization, dated as of even date herewith, among the Company, AOL Acquisition Corp., a wholly owned subsidiary of the Company, and WAIS.

**1. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to the Company that:

(a) **Purchase for Own Account for Investment**. Purchaser is purchasing the Restricted Securities for Purchaser's own account for investment purposes only and not with a view to, or for sale in connection with, a distribution of the Restricted Securities within the meaning of the Securities Act of 1933, as amended (the "**1933 Act**"). Purchaser has no present intention of selling or otherwise disposing of all or any portion of the Restricted Securities and no one other than Purchaser has any beneficial ownership of any of the Restricted Securities.

(b) **Access to Information**. Purchaser has had access to all information regarding the Company and its present and prospective business, assets, liabilities and financial condition that Purchaser reasonably considers important in making the decision to purchase the Restricted Securities, and Purchaser has had ample opportunity to ask questions of the Company's representatives concerning such matters and this investment.

(c) **Understanding of Risks**. Purchaser is fully aware of: (i) the highly speculative nature of the investment in the Restricted Securities; (ii) the financial hazards involved; (iii) the lack of liquidity of the Restricted Securities and the restrictions on transferability of the Restricted Securities (e.g., that Purchaser may not be able to sell or dispose of the Restricted Securities or use them as collateral for loans); (iv) the qualifications and



[Allen L. Morgan]

May 23, 1995

America Online, Inc.  
8619 Westwood Center Drive  
Vienna, VA 22182

**Investment Representation Agreement****Ladies and Gentlemen:**

On this date the undersigned ("**Purchaser**") has acquired from America Online, Inc., a Delaware corporation (the "**Company**"), an aggregate of 122 shares of the Company's Common Stock (the "**Restricted Securities**") in consideration of Purchaser's delivery to the Company of shares of Common Stock of Wide Area Information Servers, Inc., a California Corporation ("**WAIS**"), as contemplated by the Agreement and Plan of Reorganization, dated as of even date herewith, among the Company, AOL Acquisition Corp., a wholly owned subsidiary of the Company, and WAIS.

**1. REPRESENTATIONS AND WARRANTIES OF PURCHASER.**

Purchaser represents and warrants to the Company that:

(a) **Purchase for Own Account for Investment.** Purchaser is purchasing the Restricted Securities for Purchaser's own account for investment purposes only and not with a view to, or for sale in connection with, a distribution of the Restricted Securities within the meaning of the Securities Act of 1933, as amended (the "**1933 Act**"). Purchaser has no present intention of selling or otherwise disposing of all or any portion of the Restricted Securities and no one other than Purchaser has any beneficial ownership of any of the Restricted Securities.

(b) **Access to Information.** Purchaser has had access to all information regarding the Company and its present and prospective business, assets, liabilities and financial condition that Purchaser reasonably considers important in making the decision to purchase the Restricted Securities, and Purchaser has had ample opportunity to ask questions of the Company's representatives concerning such matters and this investment.

(c) **Understanding of Risks.** Purchaser is fully aware of: (i) the highly speculative nature of the investment in the Restricted Securities; (ii) the financial hazards involved; (iii) the lack of liquidity of the Restricted Securities and the restrictions on transferability of the Restricted Securities (e.g., that Purchaser may not be able to sell or dispose of the Restricted Securities or use them as collateral for loans); (iv) the qualifications and

[WS Investment Co. 95A]

May 23, 1995

America Online, Inc.  
8619 Westwood Center Drive  
Vienna, VA 22182

**Investment Representation Agreement**

Ladies and Gentlemen:

On this date the undersigned ("Purchaser") has acquired from America Online, Inc., a Delaware corporation (the "Company"), an aggregate of 1,107 shares of the Company's Common Stock (the "Restricted Securities") in consideration of Purchaser's delivery to the Company of shares of Common Stock of Wide Area Information Servers, Inc., a California Corporation ("WAIS"), as contemplated by the Agreement and Plan of Reorganization, dated as of even date herewith, among the Company, AOL Acquisition Corp., a wholly owned subsidiary of the Company, and WAIS.

**1. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to the Company that:

(a) **Purchase for Own Account for Investment.** Purchaser is purchasing the Restricted Securities for Purchaser's own account for investment purposes only and not with a view to, or for sale in connection with, a distribution of the Restricted Securities within the meaning of the Securities Act of 1933, as amended (the "1933 Act"). Purchaser has no present intention of selling or otherwise disposing of all or any portion of the Restricted Securities and no one other than Purchaser has any beneficial ownership of any of the Restricted Securities.

(b) **Access to Information.** Purchaser has had access to all information regarding the Company and its present and prospective business, assets, liabilities and financial condition that Purchaser reasonably considers important in making the decision to purchase the Restricted Securities, and Purchaser has had ample opportunity to ask questions of the Company's representatives concerning such matters and this investment.

(c) **Understanding of Risks.** Purchaser is fully aware of: (i) the highly speculative nature of the investment in the Restricted Securities; (ii) the financial hazards involved; (iii) the lack of liquidity of the Restricted Securities and the restrictions on transferability of the Restricted Securities (e.g., that Purchaser may not be able to sell or dispose of the Restricted Securities or use them as collateral for loans); (iv) the qualifications and

Wide Area Information Servers, Inc.  
May 23, 1995  
Page 4

that under various reports published by committees of the State Bar of California, certain assumptions, qualifications and exceptions are implicit in opinions of lawyers. Although we have expressly set forth some assumptions, qualifications and exceptions herein, we are not limiting or omitting any others set forth in the various reports or otherwise deemed standard by practice for lawyers in California.

Based upon and subject to the foregoing, and subject to the qualifications and exceptions contained herein, and except as may be otherwise set forth in AOL's Schedule of Exceptions delivered concurrently with execution of the Plan, as such Schedule has been updated in writing subsequent to the execution and delivery of the Plan, we are of the opinion that:

1. Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has the corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted and as proposed to be conducted.
2. ~~To the best of our knowledge, immediately~~ Immediately prior to the Closing, the authorized capital stock of Sub consists of 1,000 shares of Common Stock, all of which are issued and outstanding and have been duly authorized, validly issued and fully paid and nonassessable, such stock is not subject to statutory preemptive rights, and AOL owns all of the outstanding shares of capital stock of Sub.
3. Sub has the corporate right, power and authority to enter into the Plan, the Agreement of Merger and the Escrow Agreement. All corporate action, including approval by Sub's Board of Directors and sole shareholder, required to be taken by or on the part of Sub to authorize Sub to execute and deliver the Plan, the Agreement of Merger and the Escrow Agreement, has been duly and validly taken.
4. The Plan, the Agreement of Merger and the Escrow Agreement have been duly authorized, executed and delivered by Sub and are valid and binding obligations of Sub enforceable against Sub in accordance with their respective terms.
5. The execution, delivery or performance by Sub of the Plan, the Agreement of Merger and the Escrow Agreement, and the consummation of the transactions provided for therein, are not in conflict with any provision of (a) the Articles of Incorporation or Bylaws of Sub, as currently in effect, or (b) any currently existing federal, state, or local judgment, or order currently binding upon, Sub or its assets or properties and which is known to us.

This opinion is intended solely for the benefit of WAIS for the purpose of Section 7.7 of the Plan and is not to be used by WAIS for any other purpose or made available to or be relied upon by any other person, firm or entity, without our prior written consent. We disclaim any duty to update, or advise WAIS of facts, circumstances, events or changes in the

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Within the past two years WALIS has not changed the equity interest of the voting common stock in contemplation of effecting the business combination. WALIS will not effect such a transaction prior to consummation of the business combination.

In September 1994, WALIS established its 1994 stock option plan. All options issued under the plan were granted to retain and motivate existing employees and not in contemplation of the pooling of interests with AOL. It was WALIS management's intention to grant such options to all employees upon becoming employees with WALIS, although the actual granting of such options was not final until approval was obtained by the WALIS Board of Directors which occurred on January 9, 1995.

The combination is to be effected in a single transaction on or about May 23, 1995. Management believes that the common stock to be issued in the combination is identical but unissued common stock of AOL with rights identical to those of the currently outstanding shares as described in AOL's Articles of Incorporation. Other than certain restrictions and limitations contained in the all-holders agreements and the escrow agreement contemplated by the Agreement and certain tax and securities laws and agreements restrictions and limitations, the Agreement (including the registration rights on the transferability or voting rights of the AOL common stock issued in connection with the transaction.

#### Manner of Combining Interests

WALIS was incorporated in 1992 and has never been a subsidiary or division of another corporation. At the date of initiation of the plan or combination, WALIS had no investment in AOL and has not acquired any investment in AOL to date. AOL has no investment in WALIS.

#### Attributes of the Combining Companies

The transaction with AOL will be treated for accounting purposes as a "pooling of interests" in conformity with the requirements of Accounting Principles Board (APB) Opinion No. 16. The criteria for the "pooling of interests" method of accounting and their relevance to this exchange are outlined below.

America Online, Inc. (AOL) entered into an Agreement and Plan of Reorganization (the Agreement) dated May 12, 1995, with its wholly-owned subsidiary, AOL Acquisition Corp., and with Wide Area Information Server, Inc. (WALIS or the Company). Subject to certain customary conditions, AOL will issue shares (or options exercisable for such shares) of its common stock in exchange for 100% of the outstanding shares of common stock and outstanding common stock options of WALIS.

Ernst & Young LLP  
8075 Leesburg Pike  
Fifth Floor, Tower II  
Vienna, VA 22182

May 12, 1995

464,874

Note: this includes  
AOL options  
for unvested  
WALIS options

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WILSON SONSINI -

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The combination will be resolved at the date of the combination is consummated, and no provisions relating to the issuance of securities or other consideration will be pending.

The voting rights of the common stock in the resulting combined corporation will be fully exercisable by the stockholders.

All liabilities specifically addressed under Section 10.2 of the Agreement relate to liabilities that existed prior to the consummation of the pooling and provide for the sharing of rights and risks arising after consummation and are not earnings or market price contingency agreements which would violate pooling of interests accounting under APB 16.

The \$500,000 secured note payable by WAIS to AOL is at a reasonable rate of interest relative to commercially available loans and was executed for valid business reasons not in contemplation of the pooling of interests.

There have been no cash payments to shareholders for two years prior to the consummation of the pooling of interests, other than normal compensation, which could be considered extra dividends and an alteration of equity interests which would violate pooling of interests accounting under APB 16.

The exchange ratio of shares of AOL common stock for 1 share of WAIS common stock is applicable to all common shareholders of WAIS and, consequently, the shareholders' relative position within WAIS will remain the same. All WAIS common stock options outstanding will be assumed by AOL at the same converted ratio and with equivalent terms, with appropriate adjustment in the exercise price thereof and with vesting credited to reflect continuous employment with WAIS prior to such assumption.

The accelerated vesting period related to the options granted to Nicholas M. Schert, Vice President and Chief Financial Officer of WAIS, was done for reasons relative to WAIS's original agreement to compensate Mr. Schert in part with common stock for consulting services provided to the Company. Upon becoming a full-time employee of WAIS, Mr. Schert agreed with WAIS to substitute the receipt of actual shares of common stock with common stock options having accelerated vesting. Therefore, the accelerated vesting period placed on common stock options given to Mr. Schert was performed for valid business reasons in relation to his prior consulting services and not in contemplation of the pooling of interests with AOL.

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Ernst &amp; Young LLP

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